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### U. S. Supreme Court Appointment

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## U. S. SUPREME COURT APPOINTMENT

Washington comment in the Minneapolis Tribune by Joseph Aslop and Robert Kintner so finely refers to beloved Justice Holmes, and Professor Felix Frankfurter's peroration of his new book "Mr. Justice Holmes and the Supreme Court" that a repetition here of extracts will be of interest to our members.

As the time of decision draws nearer, the rumors about the President's forthcoming supreme court appointment constantly increase. If all of them should come true, the President would have to name a whole benchful of Justices, most of them bad.

The choice is difficult, being impressed with the sectional arguments, extremists arguments, nationality arguments, and conservative arguments. The truth is that no one but the President himself knows, and perhaps he has not made up his mind.

But amid the turmoil one man stands out, and that is Professor Felix Frankfurter, therefore under the circumstances it is news that Frankfurter has summed up his ideal of a justice of the supreme court in three paragraphs of beautifully lucid prose which form the peroration of his new book "Mr. Justice Holmes and the Supreme Court." They follow:

"Mr. Justice Holmes brought to his work a sense of history. His traditions were founded not on fear but on knowledge, and his rejections came from knowledge, not from the blindness of prejudice. He left the issues in the arena where they belong. He knew that judges in their way legislate, and therefore did not propose that they should undermine the legislature's power to legislate. He knew too much to believe that it was within his power to save, if it was within the legislature's power to ruin. 'I believe with Montesquieu,' he said 'that if the chance of a battle—I may add the passage of a law—has ruined a state, there was a general cause at work that made the state ready to perish by a single battle or law.' Therefore, whenever he upheld, as he so often did, legislation in the substance of which he disbelieved, he exhibited the judicial function at its purest. He transcended his own preferences, for he was the guardian of the country's past, present and future. And so he was as modern when he ended his work as when he began it.

"From the constitutional opinions of Mr. Justice Holmes there emerges the conception of a nation adequate to its national and international duties, consisting of federated states in their turn possessed of ample power for the diverse uses of a civilized people. He was mindful of the union which he helped to preserve at Balls Bluff, Antietam and Fredericksburg; he was equally alert to assure scope for the states upon which the union rests. He would not, by sterile abstraction, paralyze federal power over commerce beyond states lines, nor hamper the states in grappling with their local problems by a provincial or partisan application of the fourteenth amendment. He found the constitution equal to the needs of a great nation at war; but according to the same con-

stitution the individual must not be sacrificed to the Moloch of unworthy fear.

"Serenely dwelling above the sound of passing shibboleths, Mr. Justice Holmes steadfastly refused to harken to the din of the moment. But his humility was too deep to make him regard even the highest tribunal as a Grand Lama. Like all human institutions, the supreme court, he believed, must earn reverence through the test of truth."

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### A NEW FIRM

William R. Pearce of Valley City and L. A. W. Stephan of Sanborn announce the formation of the law firm of Pearce & Stephan, with offices in the First National Bank Building Valley City, North Dakota.

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### DELINQUENT LICENSE FEES

While our members have made a consistent record of 98% payment of their license fees in due season, the other two per cent continue to lag, and it is somewhat embarrassing to your officers in view not only of the old statute forbidding one to practice until the fee is paid, but the amendment of 1933 which makes it misdemeanor to do so, and unless compliance is made soon their names will be dropped from the rolls. This is obligatory.

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### BAR BOARD REFERENDUM

Not later than December 1st your secretary mails to each member of the association a ballot to select three members for recommendation to the Supreme Court to fill the vacancy created on the State Bar Board by the expiration of the term of the Hon. J. P. Cain of Dickinson. These names are selected by the Executive Committee. Members may add other names or nominations by petitions directed to the Secretary signed by ten members; and such petitions can be filed with the secretary not later than November 20th.

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### OUR SUPREME COURT HOLDS

(Continued from Last Month)

That under the laws of North Dakota, the Supreme Court, after hearing an appeal in a criminal action, must give judgment without regard to technical errors, or defects, or exceptions which do not affect the substantial rights of the parties.

That the evidence is considered and, for reasons stated in the opinion, held to be sufficient to sustain a verdict of murder in the second degree.

Appeal from the District Court of Burleigh County, McKenna, Special Judge.

The defendant was convicted of the crime of murder in the second degree and appeals from the judgment of conviction, and from orders denying her motions for a new trial.